IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 34 OF 2007
WITH
CIVIL APPLICATION NO. 1113 OF 2007
IN
WRIT PETITION NO. 1644 OF 2005

Sanjay Ramesh Keni and ors. ..Petitioners

Vs.

Yeshwant Vasudeo Natu and ors. ..Respondents

Mr. Vilas B. Tapkir for petitioners.
Mr.G.S. Godbole for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : April 30, 2007.

P.C.:

1. Heard Mr. Tapkir the learned counsel for the review petitioners. Mr. Godbole appears for the respondents.

2. Writ Petition No. 1644 of 2005 was dismissed on 24/10/2005 in terms of the following order:-

"Heard learned counsel for the petitioner.

> Perused the order of the district court. By the impugned order the district court has remanded the case to the trial court. I do not see any ground to interfere with the said order of remand. Petition is dismissed."

3. Mr. Tapkir the larned counsel for the petitioners invited my attention to the judgment and order rendered by the learned 7th Ad-hoc Additional District Judge at Pune in Civil Appeal No. 602 of 1998 on 10/1/2005. The operative part of the order passed by the District Court reads as under:-

> "Civil Appeal No.602/98 filed by present appellant against respondent no.1 (original plaintiff) and others is dismissed with costs throughout. Decree be drawn up accordingly."

4. The decree passed by the learned Additional Judge, Small Causes Court at Pune in Civil Suit No. 619 of 1995 against which the District Court dismissed the appeal in terms of the above order reads as under:-

"The plaintiffs suit is decreed.

The defendants shall deliver the possession of the suit premises to the plaintiff within three months from the date of this order.

The defendants shall bear the plaintiffs costs of this suit in addition to their own.

Decree be drawn up accordingly."

5. It is thus clear that the District Court by the impugned order had not remanded the case to the trial court and, in fact, the decree passed by the trial court for eviction has been confirmed by the District Judge. Apparently there is an error in the order dated 24/10/2005 on the face of the record and the basis of dismissing the petition is contrary to the record. Hence to that extent the review petition will have to be allowed.

6. Hence this review petition succeeds and the

same is allowed. Rule is made absolute in terms of prayer clause (a).

7. Civil Application No.1113 of 2007 does not survive and shall stand disposed as such.

(B.H. Marlapalle,J.)